

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANNY JOE BARBER III,

Plaintiff,

v.

BREMERTON POLICE
DEPARTMENT,

Defendant.

CASE NO. C24-5618 BHS

ORDER

THIS MATTER is before the Court on Magistrate Judge David W. Christel's Report and Recommendation (R&R), Dkt. 9, recommending that the Court dismiss pro se prisoner plaintiff Danny Barber's § 1983 complaint against the Bremerton Police Department for failure to state a plausible claim and for failure to prosecute this action.

Judge Christel granted Barber's application to proceed *in forma pauperis*, Dkt. 4, but declined to serve it and ordered Barber to show cause why it should not be dismissed as facially barred by *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). Dkt. 6. Barber re-filed his complaint, Dkt. 7, and Judge Christel again ordered him to show cause by October 17, 2024, why it should not be dismissed, and why the dismissal should not count as a

1 “strike” under 28 U.S.C. § 1915(g). Dkt. 8. Barber did not respond, and he did not amend
2 his complaint.

3 The R&R recommends that the Court dismiss the case without prejudice for
4 failure to state a plausible claim, as barred by *Heck*, for failure to comply with the Court’s
5 orders, and for failure to prosecute. Dkt. 9.

6 A district court “shall make a de novo determination of those portions of the report
7 or specified proposed finding or recommendations *to which objection is made.*” 28
8 U.S.C. § 636(b)(1)(C) (emphasis added); *accord* Fed. R. Civ. P. 72(b)(3). It must modify
9 or set aside any portion of the order that is clearly erroneous or contrary to law. Fed. R.
10 Civ. P. 72(a) (emphasis added). The district judge may accept, reject, or modify the
11 recommended disposition; receive further evidence; or return the matter to the magistrate
12 judge with instructions. Fed. R. Civ. P. 72(b)(3). A district judge must review the
13 magistrate judge’s findings and recommendations de novo *if objection is made*, but not
14 otherwise. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).
15 A proper objection requires specific written objections to the proposed findings and
16 recommendations in the R&R. Fed. R. Civ. P. 72(b)(2).

17 Barber has not objected to the R&R and its conclusions and recommendations, and
18 they are not clearly erroneous or contrary to law. Rule 72(a).

19 The R&R is therefore **ADOPTED**. Barber’s complaint is **DISMISSED** without
20 prejudice and without leave to amend. Barber’s *in forma pauperis* status is **REVOKED**,
21 and this dismissal of his proposed complaint is a “**STRIKE**” under 28 U.S.C. § 1915(g).

22 The Clerk shall enter a **JUDGMENT** and close the case.

1 **IT IS SO ORDERED.**

2 Dated this 22nd day of November, 2024.

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5 BENJAMIN H. SETTLE
6 United States District Judge
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